

No. 31997-1-III

**FILED**  
Aug 11, 2015  
Court of Appeals  
Division III  
State of Washington

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

ALAN ROSS HACKNEY, Appellant.

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REPLY BRIEF OF APPELLANT

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## I. COUNTER-STATEMENT OF FACTS

In its statement of the case, the State noted:

The skull was fractured on both sides in the parietal region resulting in bleeding that needed to be surgically drained. (State's Brief at 3).

This is incorrect. Contrary to the State's version, Dr. Katrina Dierks did not say the bleeding needed to be surgically drained. Rather, she testified there was "[n]o bleeding that needed to be surgically drained." (9/17/13 RP 76). Indeed, Dr. Gruber, the neurosurgeon told her the skull fractures and bleeding were "not significant." (*Id.* at 74-75). "Not significant" meant the neurosurgeon did not need to be consulted; there was no need to do surgery, and her body was going to heal. (*Id.* at 79).

The State also pointed to the investigating detective's report to show Mr. Hackney admitted throwing SH to the floor:

In cross-examination, the defense brought out that the detective's report stated that: "Alan lost control over his frustrations and threw [S.] hard to the floor." Although the Defendant nodded in response to the detective's statement that he had become frustrated, lost control, and thrown the baby, defense argued the nod did not indicate agreement with the detective's statement. (State's Brief at 7).

But the detective acknowledged his statement that Mr. Hackney admitted losing control and throwing the baby to the floor was not an accurate description of what he said:

Q: Do you believe that's an accurate description of what Mr. Hackney said in his recorded interview?

A: I guess I should have read it as "he agreed with me," versus "he said." (9/13/17 RP 111).

Despite the impression given by the State, the record shows Mr. Hackney never said he dropped SH on purpose and the detective admitted he "never verbally said it." (*Id.*). Rather, the detective interpreted Mr. Hackney's nod as his agreeing with him. (*Id.*).

## II. ARGUMENT

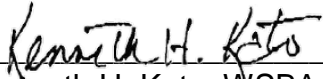
With respect to the State's legal argument, Mr. Hackney rests on his opening brief. As pointedly observed by the trial judge, "This is not a real strong case." (9/18/13 RP 364). Indeed, it was not. The jury improperly resorted to guess, speculation, and conjecture to find the existence of facts necessary to support the conviction. *State v. Hutton*, 7 Wn. App. 726, 502 P.2d 1037 (1972). Even with all inferences from the dearth of evidence taken in a light

most favorable to the State, it failed to show intent beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980). The conviction cannot stand.

### III. CONCLUSION

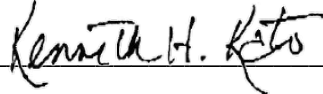
Mr. Hackney respectfully asks this court to reverse his conviction of second degree assault of a child and dismiss the charge or remand for new trial.

DATED this 11<sup>th</sup> day of August, 2015.

  
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### CERTIFICATE OF SERVICE

I certify that on August 11, 2015, I served the reply brief of appellant by first class mail, postage prepaid, on Alan Hackney, 319 S. Mill St., Milton-Freewater, OR 97862; and by email, as agreed by counsel, on Teresa Chen at tchen@co.franklin.wa.us.

  
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